

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists. This regulation is being amended as an emergency regulation necessary for the immediate preservation of the general welfare, within the meaning of Government Code Section 11346.1.

Description of Specific Facts Which Constitute the Emergency:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department readopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order.

Since April 2004, the USDA, APHIS has issued a series of federal emergency orders that amended the articles regulated including on: 1) August 5, 2004, 2) December 21, 2004, 3) August 3, 2005, and 4) September 14, 2005. As a result, it was necessary to make emergency amendments to the State's regulation governing the intrastate movement of hosts and associated articles (nursery stock) with these federal orders. Without a parallel State regulation that is substantially the same as the federal domestic quarantine and related federal orders, the USDA cannot regulate less than the entire State.

On November 15, 2005, the USDA, APHIS again issued a new federal order that becomes effective November 28, 2005. As an interim measure, *Abies concolor* (white fir) and *Viburnum opulus* [(= *V. trilobum*)(American cranberry viburnum)], plants are specifically noted as being

added to those under regulation under the federal order dated December 21, 2004. This federal order specifically affects the interstate movement of nursery stock from the States of Washington, Oregon, and California. Under authority of this order, nurseries operating under a compliance agreement may continue to ship “Hosts and Associated Plants” including these newly listed plants. Any other nurseries containing these newly listed associated plants must be properly inspected, sampled and tested and placed under a Compliance Agreement by November 28, 2005, to be able to move plants interstate.

This action is authorized by the Plant Protection Act of June 20, 2000, as amended, Section 412(a), 7 U.S.C. 7712(a), which authorizes the United States Secretary of Agriculture to prohibit or restrict the movement in interstate commerce of any plant, plant part, or article if the Secretary determines the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States.

The November 15, 2005 federal order also had a revised “APHIS List of Hosts and Plants Associated with *Phytophthora ramorum* (Revision dated 10 November 2005).” Upon review of this list, two hosts; *Griselinia littoralis* (Greselinia) and *Parrotia persica* (Persian ironwood); and, one associated host, *Taxus x media* (Yew) are present that are not currently listed as regulated under Section 3700. Therefore, to ensure harmonization with the federal order, these plants are also being added to Section 3700.

Additionally, non-substantial changes involving typographical errors pertaining to the spelling of scientific names and the closing of parentheses have been made.

Section 3700(c) already lists *Viburnum opulus* (European cranberrybush viburnum) as an associated host. However, the federal order is adding its synonymy and common name to *V. opulus* since the old name is often used in the nursery trade. Therefore, the Department is proposing an emergency amendment to Section 3700(c) to continue to provide the necessary regulatory framework for a State program to continue to arrest the intrastate and interstate spread of this disease and be in compliance with the November 15, 2005 federal order.

The Department proposes to amend this regulation because it is necessary to continue to have

authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize the State's regulation governing the intrastate movement of nursery stock with the latest federal order that governs the interstate movement of California nursery stock. Immediate amendment of this regulation is necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it is necessary to immediately amend this regulation to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and commodities that may carry *Phytophthora ramorum*. Without the immediate implementation of this proposed regulatory action, the USDA, APHIS may consider the entire state as infested with *Phytophthora ramorum*, rather than just the current 14 regulated counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California commodities by our international trade partners.

Specific facts and circumstances clearly also indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban landscapes, and watersheds. This disease is known to occur in 14 California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting Shreve's oak and non-oak species such as rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, manzanita, and toyon and other hosts causing foliar and stem disease symptoms.

The proposed emergency amendment of Section 3700(c) will establish new hosts and associated hosts that would be covered by restrictions to prevent artificial spread of the pest to non-infested areas and correct some typographical errors. To protect California's agricultural industry, it is necessary to immediately regulate movement of hosts and potential carriers that

can transfer the pest within and from the infested area. Therefore, it is necessary to amend

Section 3700(c) on an emergency basis.

Authority and Reference Citations

Authority: Sections 407, 5321 and 5322, Food and Agricultural Code.

Reference: Sections 24.5, 5321, and 5322, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; Section 1084 *et seq.*, Code of Civil Procedure.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

Section 3700. Oak Mortality Disease Control.

The proposed emergency amendment of Section 3700(c) will establish *Griselinia littoralis* (Greselinia) and *Parrotia persica* (Persian ironwood) as hosts; and, *Abies concolor* (white fir), *Taxus x media* (Yew) and the synonymy and common name for *Viburnum opulus* [(= *V. trilobum*)(American cranberry viburnum)] as associated host plants under the articles and commodities covered by the regulation. The effect of the regulation is to provide authority for the State to regulate movement of these new associated hosts and potential carriers of disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry and the environment.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3700 does not impose a mandate on local agencies or school districts, except that the agricultural commissioner of a county under regulation has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the 14 affected agricultural commissioners requested that they be added to the regulation.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.